

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE
DEFIBRILLATORS PRODUCTS LIABILITY
LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Robert Brown, Jr., individually and on
behalf of the Estate of Barbara Brown,
deceased,

v. Civil No. 06-1574 (DWF/AJB)

Guidant Corporation and Guidant Sales
Corporation.

**ORDER REGARDING
GUIDANT'S MOTION
TO DISMISS FOR
LACK OF STANDING**

Plaintiff commenced this action individually and on behalf of the Estate of Barbara Brown for injuries allegedly arising from Barbara Brown's implantable pacemaker that was manufactured by Guidant. On September 13, 2006, Guidant filed a motion to dismiss for lack of standing pursuant to Federal Rule of Civil Procedure 17 and N.Y. EPTL §§ 5-4.1 and 11-3.2. Normally, dismissal for lack of standing is without prejudice. Here, Guidant seeks dismissal with prejudice, although it does not explain why dismissal with prejudice is warranted. In response, Plaintiff asks the Court to grant him an extension of time to be appointed as a personal representative of the Estate of Barbara Brown pursuant to N.Y. C.P.L.R. 205(a) or, in the alternative, to dismiss this action without prejudice.

Based on the submissions of the parties, and upon a review of the file, the records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Guidant's Motion to Dismiss for Lack of Standing (MDL 05-1708 (DWF/AJB), Doc. No. 602, Civ. No. 06-1574 (DWF/AJB), Doc. No. 3) is **GRANTED IN PART.**

2. Plaintiff's Complaint (Civ. No. 06-1574 (DWF/AJB), Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 7, 2006

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court